

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERTA A. THOMPSON,

Plaintiff,

vs.

COMMISSIONER OF THE SOCIAL
SECURITY ADMINISTRATION,

Defendant.

Case No. 4:06-cv-85

Hon. Gordon J. Quist

REPORT AND RECOMMENDATION

On December 28, 2006, the court granted the parties' stipulation to reverse and remand this matter to the Social Security Agency pursuant to sentence four of 42 U.S.C. § 405(g). This matter is before the court on plaintiff's application for attorney fees and expenses pursuant to the Equal Access to Justice Act (EAJA) (docket no. 13) and her amended motion for fees and costs pursuant to the EAJA (docket no. 16).

The EAJA provides in relevant part that:

Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses . . . incurred by that party in any civil action brought by or against the United States . . . , unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d).

The "fees and other expenses" authorized by the EAJA include:

reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished except that . . . (ii) attorney fees shall not be awarded in excess of \$125 per hour unless the court determines that an increase in the cost of living or a special factor,

such as limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.)

28 U.S.C. § 2412(d)((2)(A)(ii).

In her original motion, plaintiff sought to recover attorney fees in the amount of \$2,975.00 and expenses in the amount of \$370.24, for a total award of \$3,345.24. Plaintiff calculated her attorney fees based upon 17.00 hours of work at an hourly rate of \$175.00. In the response to this motion, defendant did not contest his liability for an EAJA award, but objected to the hourly rate of \$175.00 as excessive. Plaintiff subsequently filed an amended motion seeking attorney fees in the amount of \$2,730.37, based upon a lower hourly rate of \$160.61, and expenses in the amount of \$370.24, for a total award of \$3,100.61. In his response to the amended motion, defendant states it has no objection to an EAJA award in this amount. The hourly rate and the number of hours spent appears reasonable for an appeal of a social security disability decision of this nature.

Accordingly, I respectfully recommend that plaintiff's motion for attorney fees and costs (docket no.13) be **DENIED**, that plaintiff's amended motion for attorney fees and costs (docket no. 16) be **GRANTED**, and that counsel be awarded attorney fees in the amount of \$2,730.37 and costs in the amount of \$370.24, for a total award of \$3,100.61.

Dated: August 21, 2007

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be served and filed with the Clerk of the Court within ten (10) days after service of the report. All objections and responses to objections are governed by W.D. Mich. LCivR 72.3(b). Failure to serve and file written objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).